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PATENTS  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: )  
George M. O'Brien ) Group Art Unit: 3612  
Serial No. 10/605,522 ) Examiner: Gordon, Stephen T.  
Filed: October 6, 2003 )  
For: TAILGATE )

**ELECTION AND RESPONSE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sirs:

Responsive to the Office Action mailed on August 4, 2004, the Applicant has the following Election and Response.

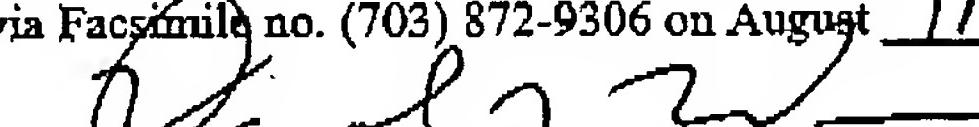
**ELECTION**

The Applicant elects the Group I claims, Claims 1-18, with traverse.

**TRAVERSAL**

The Applicant respectfully traverses the restriction requirement with respect to the Group II claims, Claims 19-23. The Examiner stated that the sub-combination (the Group I claims) has separate utility such as use as a gate for a conveyor and/or use on a static/non-dump

I hereby certify that this correspondence is being sent to the Commissioner for Patents, via Facsimile no. (703) 872-9306 on August 11, 2004.

  
Daniel J. Warren - Reg. No. 34,272

AO 1168789.1

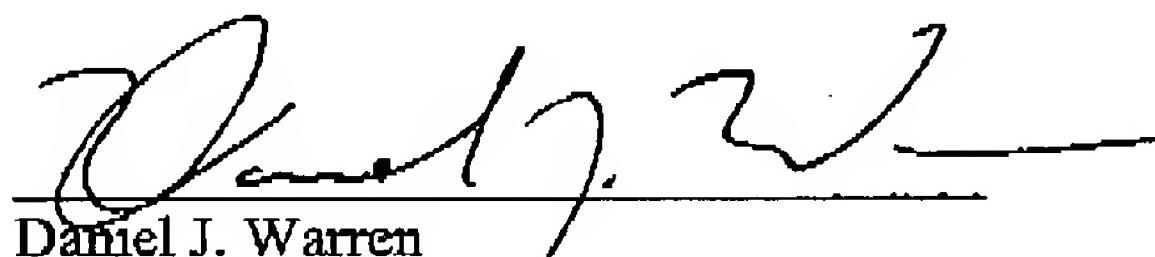
vehicle bed. The Applicant asserts that this "separate utility" is incorrect in that Claim 1 specifically states that each of the pair of arms is positioned on the protrusion "for rotation thereabout". The Applicant asserts that a conveyor is not applicable given that recitation of a truck in the preamble and the recitation of a truck bed in the body of the claims. The Applicant further asserts that a static/non-dump vehicle is not applicable given the specific recitation that the arms are positioned for rotation.

MPEP §806.05(c) states that if the Applicant can establish that the "separate utility" suggested by the Examiner cannot be accomplished, the burden shifts to the Examiner to document a viable separate utility or withdraw the requirement. The Applicant requests that the Examiner do so.

### CONCLUSION

The Applicant believes it has responded to each matter raised in the Office Action. Allowance of all claims is respectfully requested. Any questions can be directed to the undersigned at (404) 853-8028.

Respectfully submitted,



Daniel J. Warren  
Reg. No. 34,272

**SUTHERLAND ASBILL & BRENNAN LLP**  
999 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3996  
(404) 853-8028  
(404) 853-8806 (Facsimile)  
[daniel.warren@sablaw.com](mailto:daniel.warren@sablaw.com)

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